

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

ROBERT DAVIS,

Plaintiff,

CIVIL ACTION NO. 21 CV 740

v.

WISCONSIN PUBLIC SERVICE CORPORATION,

Defendant.

COMPLAINT

NOW COMES the Plaintiff, Robert Davis, by and through his attorneys, McDonald & Kloth, LLC, and as and for his Complaint against the Defendant, Wisconsin Public Service Corporation, alleges and shows to the court as follows:

NATURE OF THE ACTION

This action arises under the Family and Medical Leave Act (hereinafter, “FMLA”) to correct unlawful employment practices including interference and retaliation under the FMLA and to provide appropriate relief to the Plaintiff who was adversely affected by such practices. Plaintiff seeks a permanent injunction against Defendant, reinstatement or front pay in lieu of reinstatement, lost wages, lost employment benefits, liquidated damages, costs, attorney’s fees, and any other such relief the Court may deem appropriate.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is proper pursuant to 28 USC §1331. This action is authorized and instituted pursuant to the FMLA (29 U.S.C. § 2601 et seq.).
2. Venue is proper in this Court pursuant to 28 USC §1331(b) and (c). The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of Wisconsin, and the employment records

relevant to such practices are maintained and administered within the Eastern District of Wisconsin.

PARTIES

3. The Plaintiff, Robert Davis (“Davis”) is an adult resident of the State of Wisconsin with a residence located at 217 Wilson Street, Antigo, Wisconsin 54409.
4. The Defendant, Wisconsin Public Service Corporation (“WPS”), is a Wisconsin corporation with its principal place of business at 700 North Adams Street, Green Bay, Wisconsin 54301. WPS lists its registered agent as Corporate Creations Network, Inc., located at 4650 West Spencer Street, Appleton, Wisconsin 54914.

STATEMENT OF FACTS

5. Davis was employed with WPS as a Locator from April 12, 2019 through September 29, 2020.
6. Davis performed his job satisfactorily throughout his employment with WPS.
7. Davis began experiencing a serious health issue in or around August 2020.
8. Davis sought medical attention for his serious health issue and informed WPS of his serious health issue.
9. Davis was diagnosed with and treated for Prostatitis and bladder instability by his treating physicians.
10. Davis applied for leave under the Family and Medical Leave Act, which WPS and its third-party administrator, The Hartford Financial Services Group, Inc. (“The Hartford”), approved.
11. WPS approved Davis for “continuous” FMLA leave beginning on August 11, 2020.
12. Davis was entitled to twelve (12) weeks of leave under the FMLA.
13. Davis periodically updated WPS as to his serious health condition by sending notes from his physician to his supervisor at WPS.

14. WPS terminated Davis's employment by letter dated September 29, 2020.
15. Davis's termination was made effective on September 29, 2020.
16. WPS terminated Davis's employment because he was on FMLA leave.
17. Since his termination, Davis has applied for a Locator position with WPS at its Wausau and Green Bay locations.
18. Davis contacted WPS's human resources department to discuss his application for these jobs.
19. WPS's human resources representative, Ms. Julie McIntyre, informed Davis that WPS would not hire Davis.
20. On information and belief, WPS refused to hire Davis because of his prior FMLA leave.

STATEMENT OF LEGAL CLAIMS

COUNT I – INTERFERENCE AND RETALIATION UNDER FMLA

21. Davis incorporates paragraphs 1 – 20 as if fully set forth herein.
22. Davis is an eligible employee under the FMLA as he had worked for WPS for over one year and was employed for at least 1,250 hours of service.
23. WPS meets the definition of a covered employer under the FMLA.
24. WPS qualified for and was approved for leave under the FMLA.
25. WPS was aware of Davis's approved FMLA leave.
26. WPS interfered with and restrained Davis's use of FMLA leave by disciplining Davis for being on approved FMLA leave and terminating his employment.
27. WPS retaliated against Davis by terminating his employment because he used leave under the FMLA.
28. As a result of the aforementioned willful violations of the FMLA, Davis is entitled to payment of lost wages and benefits, and an additional, equal amount as liquidated damages in accordance with 29 U.S.C. § 2617(a)(1).

29. Pursuant to 29 U.S.C. § 2617(a)(3), Davis is entitled to reimbursement of the costs and attorney's fees expended in successfully prosecuting this FMLA action.

PRAYER FOR RELIEF

A. Grant a permanent injunction against the Defendant and its officers, assigns and all persons in active concert or participation with them, from engaging in any employment practice which interferes with or restrains an employee's rights under the FMLA.

B. Order the Defendant to institute and carry out policies, practices and programs that comply with the mandates of the FMLA.

C. Order the Defendant to compensate Davis by providing reinstatement and appropriate back pay, front pay, liquidated damages, attorney's fees, and costs for its violation of the FMLA.

D. Grant such further relief as the Court deems necessary and proper in the public interest.

JURY TRIAL DEMANDED

The Plaintiff, Robert Davis, requests a jury trial on all questions of fact raised by this complaint.

Dated on this 17th day of June, 2021.

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